

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

RODERICK RIDEAU, :
Petitioner, : Case No. 3:00CV427
vs. : District Judge Walter Herbert Rice
HARRY RUSSELL, Warden, : Magistrate Judge Sharon L. Ovington
Lebanon Correctional Institution, :
Respondent. :
:

SUPPLEMENTAL REPORT AND RECOMMENDATIONS¹

On August 25, 2009, the Sixth Circuit Court of Appeals reversed the judgment of the District Court granting the writ and remanded for a hearing to determine if Petitioner can establish cause and prejudice to excuse his procedural default. (Doc. # 87). Thereafter, the District Court referred the matter to the undersigned for the purpose of conducting an evidentiary hearing. (Doc. # 88).

On December 4, 2009, Petitioner's appointed counsel filed a notice with the Court stating that Petitioner has no further evidence to offer in this case.² (Doc. # 92).

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendations.

² Petitioner has been paroled.

IT IS THEREFORE RECOMMENDED THAT:

1. Roderick Rideau's Third Amended Petition for a Writ of Habeas Corpus (Doc. #23) be DENIED and DISMISSED;
2. A certificate of appealability not issue; and
3. The case be terminated on the docket of this Court.

December 7, 2009

s/Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).